IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE THIRTEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

-

WRIT PETITION NO : 9292 of 2004

Between:

V. Dhana Rukhmini, W/o. V.V. Krishna Rao,
R/o. Vijayawada.

..... PETITIONER

AND

1 The APSRTC, rep by its Managing Director,
Musheerabad, Hyderabad.
2 The Regional Manager, Krishna Division, APSRTC, Vijayawada.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ or direction particularly in the nature of mandamus or any other appropriate writ, declaring the proceedings No. 01/137(6)/2004-RM(K), dated 28-4-2004, on the file of the 2nd respondent as illegal, void and arbitrary and in violation of principles of natural justice.

Counsel for the Petitioner:MR.V.R.AVULA

Counsel for the Respondents: MR.P.VENKATESWARLU, Standing Counsel for APSRTC.

The Court made the following ORDER:

Heard both the learned counsel and at their request, the writ petition itself is taken for disposal.

Petitioner herein, who is a licensee and running a stall in Pandit Nehru Bus Station, Vijayawada, filed this writ petition, inter alia, seeking writ of Mandamus declaring the impugned order passed by second respondent, whereunder the petitioner was asked to make payment of substantial amount towards penalty.

The case of the petitioner is that on the ground that he encroached, the respondents straightaway issued impugned orders without issuing any notice or conducting any enquiry. Hence, this writ petition.

Learned Standing counsel appearing on behalf of the respondents submits that on the ground that the petitioner as well as others encroached, notice was given to remove the same and in spite of the same, it was not removed and subsequently, a Committee was constituted, which, after inspection, submitted a report in regard to the area in occupation and also the penal rent which each encroacher has to pay. Based on the said report, impugned orders were passed. Therefore, the petitioner is not entitled to any indulgence.

Having heard the submissions made on either side and on perusal of the material on record, it is seen that there is no dispute in regard to the encroachment made by the petitioner. Though a notice to remove the same was issued, the petitioner did not remove the encroachment. On a reading of the impugned order dated 28-4-2004, it is seen that there is a demand of substantial amount of Rs. 1,06,582/- towards penalty for the encroachment made. It does not disclose as to any notice given or any enquiry was conducted. Further, it is the case of the respondents that after issuing notice for eviction in regard to the encroached area, a Committee was

constituted, which, after making local inspection, submitted its report pointing out encroachment area and the penalty. There was no attempt on the part of the respondents herein to give opportunity to the petitioner to substantiate his case or even rebut the allegation sought to be made either in regard to the encroachment or in regard to the amount. In the circumstances, the impugned order is against the principles of natural justice and it is liable to be set aside.

Accordingly, this writ petition is allowed and the impugned orders are set aside. It is, however, open to the respondents to pass fresh orders in accordance with law, after giving notice and opportunity to the petitioner. No costs.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Friday the Thirteenth day of August, Two thousand and four.

Sd/-

ASSISTANT REGISTRAR

To

1 The APSRTC, rep by its Managing Director,
Musheerabad, Hyderabad.
2 The Regional Manager, Krishna Division, APSRTC, Vijayawada.

3 Two CD copies.